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JOSEPH BRUNGARD

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – ALAMEDA DIVISION

JOSEPH BRUNGARD, individually
and behalf of others similarly
situated;

Plaintiff,
vs.

GHIRARDELLI CHOCOLATE
COMPANY, a California
corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.:

CLASS ACTION COMPLAINT FOR:

- (1) **Unfair Business Practices,
California Business & Professions
Code §§ 17200, *et seq.*;**
- (2) **Violations of the California
Consumers Legal Remedies Act,
Civil Code § 1750, *et seq.*;**
- (3) **Unjust Enrichment;**
- (4) **Violations of the Consumer Fraud
Laws of the Various States;**
- (5) **Negligent Misrepresentation;**
- (6) **Intentional Misrepresentation;**
- (7) **Violation of the California False
Advertising Law, California
Business & Professions Code §§
17500, *et seq.*; and**
- (8) **Fraud**

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. “Life is like a box of chocolates. You never know what you’re gonna
3 get.” *See* *Forrest Gump*, dir. Robert Zemeckis (Paramount Pictures, 1994; DVD,
4 Paramount, 2001).

5 2. With Ghirardelli, this could not be truer. It markets bags of its
6 individually-wrapped, uniformly-shaped, single-serving chocolates to consumers,
7 and claims that each bag contains a certain number of chocolates, but those bags
8 contain less squares than advertised.

9 3. Ghirardelli enjoys revenues of up to \$500 million annually—likely in
10 part from the money it saves by omitting chocolates from its packages.

11 4. Plaintiff Joseph Brungard, on behalf of himself and other similarly
12 situated, brings this action against Defendants Ghirardelli Chocolate Company, a
13 California corporation, and DOES 1 to 100, (“Defendants”), and alleges on
14 information and belief as follows:

PARTIES

15
16 5. Plaintiff Joseph Brungard is, and at all relevant times was, an
17 individual residing in the County of San Diego, California. He is an aggrieved
18 customer of Defendant.

19 6. Ghirardelli Chocolate Company, is, and at all relevant times was, a
20 California Corporation doing business in the State of California. It is headquartered
21 in San Leandro, California.

22 7. The true names and capacities—whether individual, corporate,
23 associate, or otherwise—of Defendants DOES 1 through 100, inclusive, are
24 unknown to Plaintiff. Plaintiff therefore sues said Defendants by such fictitious
25 names. Plaintiff is informed and believes, and thereon alleges, that each of the
26 Defendants designated as a DOE is responsible in some manner for the events
27 alleged, and caused injury and damages to Plaintiff as alleged.
28

1 8. Each reference in this Complaint to “Defendant,” “Defendants,” or a
2 specifically named Defendant refers also to Defendants sued under fictitious names.

3 9. At all times herein mentioned, each of the Defendants were the agents
4 and employees of each of the remaining Defendants and, in doing the things alleged,
5 was at all times acting within the purpose, course, and scope of said agency or
6 employment with the knowledge, consent, permission, and subsequent ratification
7 of each of the other Defendants.

8 **JURISDICTION AND VENUE**

9 10. This Court has subject matter jurisdiction over Plaintiff’s claims
10 pursuant to United States Code, title 28, section 1343(4), because these claims seek
11 redress on behalf of a nationwide class, some members of which are citizens of a
12 state other than California. On information and belief, Plaintiff alleges that the
13 amount in controversy exceeds \$5 million.

14 11. This Court has jurisdiction over Defendant because it conducts
15 substantial business in California and is headquartered in San Leandro. Defendant
16 intentionally availed itself to the laws and markets of California through operation
17 of its business in California and San Leandro.

18 12. Venue is proper in the Northern District of California pursuant to
19 United States Code, title 28, sections 1391(b)(1), (b)(2), (b)(3), and (c). A
20 substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred
21 in this judicial District. Defendant is headquartered in this District.

22 **GENERAL ALLEGATIONS**

23 13. Plaintiff re-alleges and incorporates by reference all preceding
24 paragraphs.

25 14. Defendant manufactures various flavors of uniformly-shaped,
26 individually-wrapped, single-serving chocolate squares. It sells these chocolate
27 squares in packs containing multiples of the same flavor and in packs containing a
28 variety of flavors. The flavors include, but are not limited to, dark chocolate spicy

1 caramel, milk chocolate caramel, dark chocolate caramel, dark chocolate mint, dark
2 chocolate sea salt, dark chocolate raspberry, milk chocolate, intense dark chocolate
3 sea salt roasted almond, intense dark 60% cacao, intense dark chocolate 86% cacao,
4 intense dark chocolate 72% cacao, and milk chocolate caramel. These flavors are
5 used only as examples and are not intended to limit the scope of this action only to
6 those flavors, should Plaintiff discover that Defendant commits the same violations
7 with other flavors.

8 15. Defendant sells these uniformly-shaped, individually-wrapped, single-
9 serving chocolate squares, in various counts, including but not limited to a ten-count
10 bag, a seventeen-count bag, and a forty-count bag. Defendant's packaging lists, on
11 its exterior, the number of individually-wrapped single-servings of chocolate
12 squares it claims are contained in the package. Defendant sells these bags of
13 chocolate squares nationwide, including in California. (Hereinafter, these may be
14 referred to as the "Class Chocolates.")

15 16. Plaintiff has been purchasing various packages of the same Class
16 Chocolates for a period of years.

17 17. After purchasing packages of these chocolate squares many times over
18 several years, Plaintiff noticed there was repeatedly one less individually-wrapped
19 square in the packages he purchased and he began taking note.

20 18. After noticing this shortage of one individually-wrapped, single-
21 serving size square on multiple occasions over several purchases, on or about June
22 29, 2017, Plaintiff called the Ghirardelli Corporate office in San Leandro,
23 California. Plaintiff notified the Ghirardelli representative with whom he spoke that
24 there is a packaging issue he discovered with one of their products—the count of
25 the individually-wrapped Ghirardelli Chocolate Squares was repeatedly short one
26 square from the number stated on the package.

1 19. Plaintiff described the packaging to the Ghirardelli representative and
2 explained that the packages each list the contents as containing a certain number of
3 individually-wrapped, single-serving Chocolate Squares, respectively, and that
4 several of the packages were each short by one Chocolate Square.

5 20. Plaintiff was placed on a brief hold and the representative came back
6 on the line and advised him that the package contents are not based on the printed
7 servings per container on each package, but is based on weight and therefore there
8 was no issue with the packaging as he described.

9 21. Plaintiff informed the representative that her explanation made no
10 sense to him and did not account for the fact that the number of squares per
11 container listed on each package repeatedly differs, and is short by one individually-
12 wrapped square, from the number inside the package.

13 22. The representative took Plaintiff's name and telephone number for a
14 manager to contact him regarding the short count of these chocolate squares
15 occurring several times over several purchases and over a lengthy period of time,
16 but Plaintiff never received a call back.

17 23. Plaintiff was unaware that Defendant had misrepresented the number of
18 chocolates in each bag of chocolate squares. Based on Defendant's
19 misrepresentations, Plaintiff purchased multiple packages of Defendant's chocolate
20 squares, only to discover that the true count repeatedly differed and was one
21 chocolate square short of the number stated on the exterior of the package. Plaintiff
22 would not have made his purchase but for these misrepresentations.

23 24. On information and belief, Plaintiff alleges that Defendant regularly
24 underfills its chocolate square packages and sells those underfilled packages
25 nationwide.

CLASS ALLEGATIONS

25. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

26. Plaintiff brings this action on behalf of himself and all other similarly situated persons as a class action pursuant to Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3). This action is also consistent with California Code of Civil Procedure section 382.

27. **CLASS PERIOD.** The Class Period shall be defined as from four years preceding the date this action is filed to a date the court deems appropriate.

28. **NATIONWIDE CLASS.** The Nationwide Class is defined as:

All persons who, while in the United States, during the Class Period, purchased the Class Chocolates manufactured by Defendant.

29. **CALIFORNIA CLASS.** The California Class is a sub-class of the Nationwide Class, and it is defined as:

All persons who, while in California, during the Class Period, purchased the Class Chocolates manufactured by Defendant.

30. Both classes will be collectively referred to as the “Classes.” Members of both classes will be referred to as Class Members. The Classes do not include (1) Defendants, their officers, and/or their directors; or (2) the Judge to whom this case is assigned; or (3) the Judge’s staff.

31. Plaintiff reserves the right to amend the above classes and to add additional classes and subclasses as appropriate based on investigation, discovery, and the specific theories of liability. This action has been brought and may be properly maintained as a class action under the provisions California Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

32. **NUMEROSITY:** The potential members of the Classes as defined are so numerous that joinder of all the members is impracticable. While the precise number

1 of class members has not been determined, Plaintiff is informed and believes that
2 Defendants have access to data sufficient to identify the members of the Classes.

3 33. Plaintiff is informed, believes, and on that basis alleges that
4 Defendants' records would provide information as to the number and location of all
5 or a large portion of the class members.

6 34. **ADEQUACY OF REPRESENTATION:** The named Plaintiff is fully
7 prepared to take all necessary steps to fairly and adequately represent the interests of
8 the classes defined above. Plaintiff's attorneys are ready, willing, and able to fully
9 and adequately represent the Classes and individual Plaintiff. Plaintiff's attorneys
10 are highly experienced in consumer class action litigation. Plaintiff intends to
11 prosecute this action vigorously.

12 35. **COMMON QUESTIONS OF LAW AND FACT:** There are predominant
13 common questions and answers of law and fact and a community of interest
14 amongst Plaintiff's and the claims of the Classes concerning:

15 a. Whether Defendant misrepresented the number of chocolates in
16 the packages of Class Chocolates;

17 b. Whether Defendant violated California Business and Professions
18 Code § 17200, *et seq.*;

19 c. Whether Defendant violated the California Consumer Legal
20 Remedies Act;

21 d. Whether Defendant violated the consumer protection laws of the
22 various states;

23 e. Whether Defendant is liable for unjust enrichment;

24 f. Whether Defendant negligently misrepresented its products;

25 g. Whether Defendant intentionally misrepresented its products;

26 h. Whether Defendant violated the California False Advertising
27 Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; and

28 i. Whether Defendant committed fraud.

1 36. **TYPICALITY:** The claims of the Plaintiff are typical of the claims of all
 2 members of the Classes because Defendants regularly mispacked and mislabeled the
 3 ten- and seventeen-count bags of chocolates.

4 37. **SUPERIORITY OF A CLASS ACTION:** A class action is superior to other
 5 available means for the fair and efficient adjudication of this controversy. Individual
 6 joinder of all Class members is not practicable, and questions of law and fact
 7 common to the Classes predominate over questions affecting only individual Class
 8 members. Each Class member has been damaged and is entitled to recovery due to
 9 Defendants' conduct described in this Complaint. A class action will allow those
 10 similarly situated to litigate their claims in the most efficient and economical
 11 manner for the parties and the judiciary. Plaintiff is unaware of any difficulties
 12 likely to be encountered in this action that would preclude its maintenance as a class
 13 action.

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION** 16 **UNFAIR BUSINESS PRACTICES,** 17 **CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *ET SEQ.*** 18 **AGAINST ALL DEFENDANTS, ON BEHALF OF PLAINTIFF,** 19 **THE NATIONWIDE CLASS, & THE CALIFORNIA CLASS**

20 38. Plaintiff re-alleges and incorporates by reference all preceding
 21 paragraphs.

22 39. Plaintiff brings this action on behalf of himself and both Classes. *See*
 23 *Mazza v. American Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012). California law
 24 applies to all persons in both classes because the illegal behavior alleged herein—
 25 mislabeling and underfilling the Class Chocolates—takes place predominately or
 26 exclusively in California. All of the illegal behavior emanates out of California and
 27 therefore California law applies to all sales occurring nationally with respect to the
 28 Class Chocolates.

4 41. Plaintiff and the Classes reserve the right to allege other violations of
5 law which constitute other unlawful business acts or practices. Such conduct is
6 ongoing and continues to this date.

43. Pursuant to Business & Professions Code section 17203, Plaintiff seeks an order requiring Defendants to immediately cease such acts of unlawful, unfair and fraudulent business practices.

45. Additionally, as authorized by Code of Civil Procedure 1021.5, Plaintiff on behalf of himself and the Classes seeks attorneys' fees in connection with this litigation, which occurs to further a public good and protect the general California citizenry.

23 46. Plaintiff re-incorporates by reference all preceding paragraphs.

1 48. This cause of action is brought pursuant to the Consumers Legal
2 Remedies Act, Civil Code, Section 1750, et seq. (the “Act”). Plaintiff is a consumer
3 as defined by Civil Code, Section 1761(d). The ten and seventeen count chocolate
4 bags are “goods” within the meaning of the Act.

5 49. Defendants violated and continue to violate the Act by engaging in
6 practices proscribed by Section 1770(a), including but not limited to:

7 a. Misrepresenting the quality of their bags of uniformly-
8 shaped, individually-wrapped, single-serving chocolates in violation of Civil
9 Code section 1770(a)(7); and

10 b. Misrepresenting the actual number of uniformly-shaped,
11 individually-wrapped, single-serving chocolates inside their bags of
12 chocolates in violation of Civil Code section 1770(a)(7).

13 50. Defendants violated the Act by making the representations and claims
14 for its products as described above when it knew, or should have known, that the
15 representations and advertisements were unsubstantiated, false, and misleading.

16 51. Pursuant to Section 1782 of the Act, Plaintiff notified Defendants in
17 writing by certified mail of the violations of Section 1770 of the Act and demanded
18 that Defendants rectify the problems associated with the actions detailed above and
19 to give notice to all affected consumers of its intent to so act. A copy of the letter,
20 dated October 12, 2017, is attached as **Exhibit A**.

21 52. Pursuant to Section 1780(d) of the Act, attached hereto as **Exhibit B** is
22 the affidavit showing that this action has been commenced in the proper forum.

23 53. Pursuant to Section 1782(d) of the Act, Plaintiff and the Classes seek a
24 Court order enjoining the above-described wrongful acts and practices.

25 54. Plaintiff has incurred attorneys’ fees and costs in connection with the
26 investigation and filing of this complaint and anticipates incurring additional
27 attorneys’ fees and costs in connection with the prosecution of this action. An award
28

1 of attorneys' fees is, therefore, appropriate pursuant to, among other grounds,
2 California Civil Code, Section 1780(d).

3 55. Plaintiff has suffered and will continue to suffer damages because of
4 the violations discussed herein. The time for Defendant to respond to the letter
5 referred to in the preceding paragraphs has not yet passed. When it does, Plaintiff
6 will amend this complaint to seek, on behalf of himself and the Classes,
7 compensatory, punitive, and all other available damages.

8 56. In all, the injuries suffered by Plaintiff and/or members of the Class as
9 a direct result of Defendant's acts include:

10 a. Purchases made in reliance on the false representations
11 made by Defendant; and

12 b. Money spent, that would otherwise not have been spent,
13 had Plaintiff and the California Class known of the actual quality and quantity
14 of the goods they were purchasing.

15 **THIRD CAUSE OF ACTION**
16 **UNJUST ENRICHMENT**
17 **AGAINST ALL DEFENDANTS, ON BEHALF OF PLAINTIFF,**
18 **THE NATIONWIDE CLASS, AND THE CALIFORNIA CLASS**

19 57. Plaintiff re-incorporates by reference all preceding paragraphs.

20 58. Plaintiff brings this action on behalf of himself and both Classes. *See*
21 *Mazza*, 666 F.3d 581. California law applies to all persons in both classes because
22 the illegal behavior alleged herein—mislabeling and underfilling the Class
23 Chocolates—takes place predominately or exclusively in California. Because the
24 misconduct emanates out of California, California law applies to the national sale of
25 Class Chocolates.

26 59. “The unjust enrichment claim can be made from common class wide
27 proof.” *Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 239 (C.D. Cal.
28 2003) (certifying a nationwide class where plaintiffs alleged defendants were
unjustly enriched through a common scheme.). “Although there are numerous

1 permutations of the elements of the unjust enrichment cause of action in the various
 2 states, there are few real differences. In all states, the focus of an unjust enrichment
 3 claim is whether the defendant was unjustly enriched. At the core of each state's law
 4 are two fundamental elements – the defendant received a benefit from the plaintiff
 5 and it would be inequitable for the defendant to retain that benefit without
 6 compensating the plaintiff. The focus of the inquiry is the same in each state.” *In re*
 7 *Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D. 46, 58 (D.N.J. Apr. 24, 2009),
 8 quoting *Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 2007).

9 60. Plaintiff and the Classes conferred a benefit on Defendant by
 10 purchasing the bags of uniform-shaped, individually-wrapped, single-serving
 11 chocolate squares.

12 61. Defendant has been unjustly enriched in retaining the revenues derived
 13 from the Classes' purchases of the uniform-shaped, individually-wrapped, single-
 14 serving chocolate squares. The retention of that benefit would be unjust because
 15 Defendant misrepresented the actual count of the chocolate squares in each package.

16 62. Plaintiff and the Classes were injured as a direct and proximate result
 17 of Defendant's misrepresentations because they would not have purchased the bags
 18 of uniform-shaped, individually-wrapped, single-serving chocolate squares if the
 19 true facts had been known. Because Defendant's retention of the non-gratuitous
 20 benefit conferred on it by Plaintiff and Classes is unjust and inequitable, Defendant
 21 must pay restitution to Plaintiffs and the Classes for their unjust enrichment, as
 22 ordered by the Court.

23 **FOURTH CAUSE OF ACTION**
 24 **VIOLATIONS OF THE CONSUMER FRAUD**
 LAWS OF THE VARIOUS STATES
 25 **AGAINST ALL DEFENDANTS, ON BEHALF OF PLAINTIFF,**
 THE NATIONWIDE CLASS, AND THE CALIFORNIA CLASS

26
 27 63. Plaintiff re-incorporates by reference all preceding paragraphs.
 28

1 64. Plaintiff brings this action on behalf of himself and both Classes. *See*
2 *Mazza*, 666 F.3d 581. California law applies to all persons in both classes because
3 the illegal behavior alleged herein—mislabeling and underfilling the Class
4 Chocolates—takes place predominately or exclusively in California.

5 65. By falsely and misleadingly labeling the number of uniform-shaped,
6 individually-wrapped, single-serving chocolate squares in each bag, Defendant has
7 engaged in unfair competition or unlawful, unfair, misleading, unconscionable, or
8 deceptive acts in violation of the state consumer statutes listed below.

9 66. Defendant has engaged in unfair competition or unfair or deceptive acts
10 or practices in violation of ALA. CODE § 8-19-1, *et seq.*

11 67. Defendant has engaged in unfair competition or unfair or deceptive acts
12 or practices in violation of ALASKA STAT. CODE § 45.50.471, *et seq.*

13 68. Defendant has engaged in unfair competition or unfair or deceptive acts
14 or practices in violation of ARIZ. REV. STAT. § 44-1522, *et seq.*

15 69. Defendant has engaged in unfair competition or unfair or deceptive
16 acts or practices in violation of ARK. CODE ANN. § 4-88-107, *et seq.*

17 70. Defendant has engaged in unfair competition or unfair or deceptive
18 acts or practices or have made false representations in violation of COLO. REV.
19 STAT. § 6-1-101, *et seq.*

20 71. Defendant has engaged in unfair competition or unfair or deceptive
21 acts or practices in violation of CONN. GEN. STAT § 42-110b, *et seq.*

22 72. Defendant has engaged in unfair competition or unfair or deceptive
23 acts or practices in violation of DEL. CODE ANN. tit. 6, § 2511, *et seq.*

24 73. Defendant has engaged in unfair competition or unfair or deceptive
25 acts or practices or made false representations in violation of D.C. CODE ANN. §
26 28-3901, *et seq.*

27 74. Defendant has engaged in unfair competition or unfair or deceptive
28 acts or practices in violation of FLA. STAT. ANN. § 501.201, *et seq.*

1 75. Defendant has engaged in unfair competition or unfair or deceptive
2 acts or practices in violation of GA. CODE ANN. §10-1-392, *et seq.*

3 76. Defendant has engaged in unfair competition or unfair or deceptive
4 acts or practices in violation of HAW. REV. STAT. § 480, *et seq.*

5 77. Defendant has engaged in unfair competition or unfair or deceptive
6 acts or practices in violation of IDAHO CODE § 48-601, *et seq.*

7 78. Defendant has engaged in unfair competition or unfair or deceptive
8 acts or practices in violation of 815 ILL. COMP. STAT. 505/1, *et seq.*

9 79. Defendant has engaged in unfair competition or unfair or deceptive
10 acts or practices in violation of IND. CODE ANN. § 24-5-0.5-1, *et seq.*

11 80. Defendant has engaged in unfair competition or unfair or deceptive
12 acts or practices in violation of IOWA CODE § 714.16, *et seq.*

13 81. Defendant has engaged in unfair competition or unfair or deceptive
14 acts or practices in violation of KAN. STAT. § 50-623, *et seq.*

15 82. Defendant has engaged in unfair competition or unfair or deceptive
16 acts or practices in violation of KY. REV. STAT. ANN. § 367.110, *et seq.*

17 83. Defendant has engaged in unfair competition or unfair or deceptive
18 acts or practices in violation of LA. REV. STAT. § 51:1404, *et seq.*

19 84. Defendant has engaged in unfair competition or unfair or deceptive
20 acts or practices in violation of ME. REV. STAT. tit. 5, § 205-A, *et seq.*

21 85. Defendant has engaged in unfair competition or unfair or deceptive
22 acts or practices in violation of MD. CODE. ANN., COM. LAW § 13-101, *et seq.*

23 86. Defendant has engaged in unfair competition or unfair or deceptive
24 acts or practices in violation MASS. GEN LAWS ch. 93A, § 1, *et seq.*

25 87. Defendant has engaged in unfair competition or unfair or deceptive
26 acts or practices in violation of MICH. COMP. LAWS § 445.901, *et seq.*

27 88. Defendant has engaged in unfair competition or unfair or deceptive
28 acts or practices in violation of MINN. STAT. § 8.31, *et seq.*

1 89. Defendant has engaged in unfair competition or unfair or deceptive
2 acts or practices in violation of MISS. CODE ANN. § 75-24-3, *et seq.*

3 90. Defendant has engaged in unfair competition or unfair or deceptive
4 acts or practices in violation of MO. REV. STAT. § 407.010, *et seq.*

5 91. Defendant has engaged in unfair competition or unfair or deceptive
6 acts or practices in violation of MONT. CODE ANN. § 30-14-101, *et seq.*

7 92. Defendant has engaged in unfair competition or unfair or deceptive
8 acts or practices in violation of NEB. REV. STAT. § 59-1601, *et seq.*

9 93. Defendant has engaged in unfair competition or unfair or deceptive
10 acts or practices in violation of NEV. REV. STAT. 598.0903, *et seq.*

11 94. Defendant has engaged in unfair competition or unfair or deceptive
12 acts or practices in violation of N.H. REV. STAT. ANN. § 358-A:1, *et seq.*

13 95. Defendant has engaged in unfair competition or unfair or deceptive
14 acts or practices in violation of N.M. STAT. ANN. § 57-12-1, *et seq.*

15 96. Defendant has engaged in unfair competition or unfair or deceptive
16 acts or practices in violation of N.J.S.A. § 56:8-1, *et seq.*

17 97. Defendant has engaged in unfair competition or unfair or deceptive
18 acts or practices in violation of N.C. GEN. STAT. § 75-1.1, *et seq.*

19 98. Defendant has engaged in unfair competition or unfair or deceptive
20 acts or practices in violation of N.D. CENT. CODE § 51-15-01, *et seq.*

21 99. Defendant has engaged in unfair competition or unfair or deceptive
22 acts or practices in violation of N.Y. GBL § 349, *et seq.* and § 350, *et seq.*

23 100. Defendant has engaged in unfair competition or unfair or deceptive
24 acts or practices in violation of the OHIO REV. CODE ANN. § 1345.01, *et seq.*
25 and OHIO REV. CODE ANN. § 4165.01, *et seq.*

26 101. Defendant has engaged in unfair competition or unfair or deceptive
27 acts or practices or made false representations in violation of OKLA. STAT. tit.
28 15, § 751, *et seq.*

1 102. Defendant has engaged in unfair competition or unfair or deceptive
2 acts or practices in violation of OR. REV. STAT. § 646.605, *et seq.*

3 103. Defendant has engaged in unfair competition or unfair or deceptive
4 acts or practices in violation of 73 PA. CONS. STAT. § 201-1, *et seq.*

5 104. Defendant has engaged in unfair competition or unfair or deceptive
6 acts or practices in violation of R.I. GEN. LAWS § 6-13.1-1, *et seq.*

7 105. Defendant has engaged in unfair competition or unfair or deceptive
8 acts or practices in violation of S.C. CODE § 39-5-10, *et seq.*

9 106. Defendant has engaged in unfair competition or unfair or deceptive
10 acts or practices in violation of S.D. CODIFIED LAWS § 37-24-1, *et seq.*

11 107. Defendant has engaged in unfair competition or unfair or deceptive
12 acts or practices in violation of TENN. CODE ANN. § 47-18-101, *et seq.*

13 108. Defendant has engaged in unfair competition or unfair or deceptive
14 acts or practices in violation of TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.*

15 109. Defendant has engaged in unfair competition or unfair or deceptive
16 acts or practices in violation of UTAH CODE. ANN. § 13-11-1, *et seq.*

17 110. Defendant has engaged in unfair competition or unfair or deceptive
18 acts or practices in violation of VT. STAT. ANN. tit. 9, § 2451, *et seq.*

19 111. Defendant has engaged in unfair competition or unfair or deceptive
20 acts or practices in violation of VA. CODE ANN. § 59.1-196, *et seq.*

21 112. Defendant has engaged in unfair competition or unfair, deceptive or
22 fraudulent acts or practices in violation of WASH. REV. CODE§ 19.86.010, *et*
23 *seq.*

24 113. Defendant has engaged in unfair competition or unfair or deceptive
25 acts or practices in violation of W. VA. CODE § 46A-6-IOI, *et seq.*

26 114. Defendant has engaged in unfair competition or unfair or deceptive
27 acts or practices in violation of WIS. STAT.§ 100.18, *et seq.*

28

115. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of WYO. STAT. ANN. § 40-12-101, *et seq.*

116. The acts, practices, and misrepresentations by Defendant described above, and Defendant's dissemination of deceptive and misleading advertising and marketing materials in connection therewith, occurring in the course of conduct involving trade or commerce, constitute unfair methods of competition and unfair or deceptive acts or practices within the meaning of each of the above-enumerated statutes, because each of these statutes generally prohibit deceptive conduct in consumer transactions. Defendant violated each of these statutes by making false and misleading statements.

117. Plaintiff and the class members were injured as a direct and proximate result of Defendant's breach because they would not have purchased the chocolates if the true facts had been known.

FIFTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION
AGAINST ALL DEFENDANTS, ON BEHALF OF PLAINTIFF,
THE NATIONWIDE CLASS, AND THE CALIFORNIA CLASS

118. Plaintiff re-incorporates by reference all preceding paragraphs.

119. Plaintiff brings this action on behalf of himself and both Classes. *See Mazza*, 666 F.3d 581. California law applies to all persons in both classes because the illegal behavior alleged herein—mislabeling and underfilling the Class Chocolates—takes place predominately or exclusively in California.

120. Defendant misrepresented the accurate number of individually wrapped, uniformly-shaped chocolate squares it adds to each of its bags.

121. Defendant had no reasonable grounds to believe that these misrepresentations were true. Despite that it had no reasonable grounds to believe these misrepresentations were true, Defendant continued to make the representations, inducing consumers, including Plaintiff, to purchase the incorrectly labeled products.

122. Plaintiff and the Nationwide Class relied on the misrepresentations that Defendant made, to their detriment. Had Plaintiff and the Class Members known Defendant's misrepresentations were untrue, they would not have purchased the products. Plaintiff and the Class Members' reliance was justified because they reasonably believed Defendant had accurately labeled its products.

123. Plaintiff and the Classes were actually and proximately damaged by the misrepresentations made by Defendant.

SIXTH CAUSE OF ACTION
INTENTIONAL MISREPRESENTATION
AGAINST ALL DEFENDANTS, ON BEHALF OF PLAINTIFF,
THE NATIONWIDE CLASS, AND THE CALIFORNIA CLASS

124. Plaintiff re-incorporates by reference all preceding paragraphs.

125. Plaintiff brings this action on behalf of himself and both Classes. *See Mazza*, 666 F.3d 581. California law applies to all persons in both classes because the illegal behavior alleged herein—mislabeling and underfilling the Class Chocolates—takes place predominately or exclusively in California.

126. Defendant intentionally misrepresented the accurate number of individually wrapped, uniformly-shaped chocolate squares it adds to each of its bags.

127. Defendant induced consumers, including Plaintiff, to purchase the incorrectly labeled products. It did so with the intent of financially benefitting from its misrepresentations, reducing the number of individually wrapped, uniformly-shaped chocolate squares it placed in each bag, and charging consumers for the number printed on the exterior of the bag even though the number is inaccurate.

128. Defendant damaged Plaintiff and the Classes by making these representations.

SEVENTH CAUSE OF ACTION
VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW
CAL. BUS. & PROF. CODE § 17500, *ET SEQ.*
ON BEHALF OF PLAINTIFF, THE NATIONWIDE CLASS
AND THE CALIFORNIA CLASS

129. Plaintiff re-incorporates by reference all preceding paragraphs.

130. Plaintiff brings this action on behalf of himself and both Classes. *See Mazza*, 666 F.3d 581. California law applies to all persons in both classes because the illegal behavior alleged herein—mislabeling and underfilling the Class Chocolates—takes place predominately or exclusively in California.

131. California Business and Professions Code section 17500 states: “It is unlawful for any...corporation...with intent directly or indirectly to dispose of real or personal property...to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated...from this state before the public in any state, in any newspaper or other publication, or any advertising device,...or in any other manner or means whatever, including over the Internet, any statement...which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

132. Defendant caused to be made or disseminated through California and the United States, through advertising, statements that were untrue or misleading, and which were known, or which by exercising reasonable care should have been known to Defendant, to be untrue and misleading to consumers and Plaintiff.

133. Defendant violated section 17500 because the misrepresentations and omissions were material and likely to deceive a reasonable consumer.

134. Plaintiff has suffered injury in fact, including losing money, as a result of Defendant’s false advertising. As set forth in the allegations concerning Plaintiff, Plaintiff relied on the misrepresentations and/or omissions of Defendant.

1 135. All of the wrongful conduct alleged herein occurred, and continues to
 2 occur, in the conduct of Defendant's business. Defendant's wrongful conduct is part
 3 of a pattern or generalized conduct that is still perpetuated and repeated, both in
 4 California and nationwide.

5 136. Plaintiff requests this Court enter such orders or judgments as may be
 6 necessary to enjoin Defendant from continuing their false advertising and to restore
 7 to Plaintiff and members of the Class any money Defendant acquired by unfair
 8 competition, and for such other relief set forth below.

9 **EIGHTH CAUSE OF ACTION**
 FRAUD
 10 **ON BEHALF OF PLAINTIFF, THE NATIONWIDE CLASS**
 AND THE CALIFORNIA CLASS
 11

12 137. Plaintiff re-incorporates by reference all preceding paragraphs.

13 138. Plaintiff brings this action on behalf of himself and both Classes. *See*
 14 *Mazza*, 666 F.3d 581. California law applies to all persons in both classes because
 15 the illegal behavior alleged herein—mislabeling and underfilling the Class
 16 Chocolates—takes place predominately or exclusively in California.

17 139. Defendant affirmatively misrepresented and concealed material facts
 18 concerning the Class Chocolates.

19 140. Defendant had a duty to disclose the accurate number of candies
 20 contained in the bags of Class Chocolates.

21 141. Defendant affirmatively misrepresented and/or actively concealed
 22 material facts, in whole or in part, to induce Plaintiff and the Classes to purchase the
 23 Class Chocolates.

24 142. Plaintiff and the Classes were unaware of these omitted material facts
 25 and would not have acted as they did had they known of the concealed and/or
 26 suppressed facts.

27 143. Because of the concealment and/or suppression of the facts, Plaintiff
 28 and the Classes sustained damages in an amount to be determined at trial.

PRAYER

Plaintiff prays for judgment against Defendants, on behalf of himself and the Class, as follows:

1. For an order certifying the class as described herein;
2. For compensatory damages according to proof where applicable;
3. For enhanced damages & civil penalties under California law;
4. For pre-judgment and post-judgment interest where allowable;
5. For costs of suit;
6. For injunctive relief, as described herein;
7. For restitution;
8. For punitive damages, where appropriate;
9. For reasonable attorneys' fees; and
10. For such other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff requests a jury on all triable issues.

Respectfully submitted:

Dated: October 12, 2017

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